U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUL 10 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a freight transportation business. It seeks to permanently employ the beneficiary in the United States as a market analyst. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

As required by statute, the petition was accompanied by an Application for Permanent Employment Certification (labor certification), ETA Form 9089, certified by the U.S. Department of Labor (DOL). The priority date of the petition is August 23, 2012.[1]

The director's decision denying the petition concluded that the beneficiary is not eligible for classification as an advanced degree professional based on a Master of Business Administration (MBA) from an unaccredited university in the United States.

The appeal of the director's decision is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.[2] The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3] A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.[4]

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the requested benefit. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

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[1] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

[2] *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g.*, *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

[3] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[4] *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[5] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so

[5] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference [visa category] status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer."

Tongatap Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Factual and Procedural History

As of the priority date of the petition, the beneficiary had completed the following postsecondary education:

- Bachelor of Arts in Economics from the awarded in 2007. The beneficiary completed the first two years of the four-year course of study at in California.
- MBA from California, awarded in 2011 following a two-year course of study.

The record of proceeding also contains:

- An excerpt from a request for evidence (RFE) issued by the Director for a different petition, requesting evidence that the beneficiary's degree from a California university was accredited or approved within California and/or throughout the United States;
- A letter from California's Bureau for Private Postsecondary Education to dated December 15, 2011, granting s application for approval to operate for the five-year period ending on December 14, 2016; and
- The beneficiary's Form I-20, Certification of Eligibility for Nonimmigrant (F-1) Student Status for the MBA program as evidence that has been approved by U.S. Immigration and Customs Enforcement (ICE) to enroll international students under the Student and Exchange Visitor Program (SEVP).

The Director denied the petition on January 16, 2013. Citing *Matter of Yau v. INS*, 13 I&N Dec. 75 (Reg. Comm. 1968), *affirmed by Yau v. INS*, 293 F. Supp. 717 (C.D. Cal. 1968) and *Tang v. INS*, 298 F. Supp. 413 (C.D. Cal. 1969), *affirmed by* 433 F. 3d 1311 (9th Cir. 1970), the Director concluded that a degree from an unaccredited institution of higher education does not qualify an alien for classification as an advanced degree professional. The Director rejected counsel's argument that *Matter of Yau v. INS* and *Tang v. INS* do not apply to the instant matter, as well as counsel's claim that the RFE from another petition is evidence that the Director previously accepted state recognition of an institution of higher education in lieu of accreditation. The Director's decision also stated that s BPPE approval in California and its approval to enroll foreign students does not overcome the lack of accreditation for classification as an advanced degree professional.

On appeal, counsel reiterates its claim that *Matter of Yau v. INS* and *Tang v. INS* are not applicable to the instant petition. Counsel states that there is no requirement in the law or applicable

regulations that the degree be issued by an accredited college or university. Instead, counsel claims that the phrase "any United States academic or professional degree" at 8 C.F.R. § 204.5(k)(2) means that degrees are acceptable not only from accredited institutions, but also from state licensed institutions (e.g., is approved by California's BPPE) and institutions approved to enroll foreign students. Counsel also contrasts the regulation at 8 C.F.R. § 204.5(k)(2) to the regulations pertaining to nonimmigrant H-1B specialty workers, which specify that a degree must be from an accredited institution. Counsel states that the lack of an explicit accreditation requirement in the advanced degree professional regulations should be interpreted as deliberate omission. This interpretation of the regulations, counsel claims, is consistent with USCIS online instructions and the Adjudicator's Field Manual, which do not mention an accreditation requirement.

Eligibility for the Classification Sought

The petitioner requests classification of the beneficiary as an advanced degree professional. Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), grants preference classification to members of the professions holding advanced degrees and whose services are sought by an employer in the United States. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of

> letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In summary, a petition for an advanced degree professional must establish each of the following:

- The offered position is a profession.
- The job offer portion of the labor certification requires, and the beneficiary possesses, no less than: a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate; *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

At issue on appeal is whether the beneficiary's MBA from an unaccredited university can be considered a U.S. academic or professional degree above a baccalaureate.

The AAO concurs with the petitioner that *Matter of Yau* and *Tang v. INS* does not directly apply to the instant appeal.[6] Nonetheless, for the reasons explained below, the beneficiary is not eligible for classification as an advanced degree professional based on a master's degree from an unaccredited U.S. institution of higher education.

The DoEd states the following on its website regarding accreditation:

> The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. An agency seeking national recognition . . . must meet the Secretary's procedures and criteria for the recognition of accrediting agencies, as published in the *Federal Register* . . . . The Secretary . . . makes the final determination regarding recognition.
> The United States has no . . . centralized authority exercising . . . control over postsecondary educational institutions in this country. . . . [I]n general, institutions of higher education are permitted to operate with considerable independence and autonomy. As a consequence, American educational institutions can vary widely in the character and quality of their programs.

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[6] The holding of these cases pertains to the former Group II, Schedule A blanket certification regulations which specifically required a degree from an accredited U.S. college or experience or a combination of experience and education equivalent to such a degree.

> . . . [T]he practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs. Private educational associations of regional or national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether or not they are operating at basic levels of quality.
> . . . Accreditation of an institution or program by a recognized accrediting agency provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees.

www.ed.gov/print/admins/finaid/accred/accreditation.html.

The DoEd's purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs. In addition, the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. As stated on its website:

> Presidents of American universities and colleges established CHEA [in 1996] to strengthen higher education through strengthened accreditation of higher education institutions . . . .
>
> CHEA carries forward a long tradition that recognition of accrediting organizations should be a key strategy to assure quality, accountability, and improvement in higher education. Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established. CHEA will recognize regional, specialized, national, and professional accrediting organizations.
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> Accreditation, as distinct from recognition of accrediting organizations, focuses on higher education institutions. Accreditation aims to assure academic quality and accountability, and to encourage improvement. Accreditation is a voluntary, non-governmental peer review process by the higher education community . . . . The work of accrediting organizations involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.

www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf.

The DoEd and CHEA recognize six regional associations – covering the entire United States and its outlying possessions – that accredit U.S. colleges and universities. One of these is the Western Association of Schools and Colleges (WASC), Accrediting Commission for Senior Colleges and

Universities. WASC's geographical scope includes California, Hawaii, and other U.S. possessions in the Pacific, and its membership represents a broad range of public and private schools in the region and other education-related organizations. The WASC website includes a list of all the higher educational institutions in its jurisdiction that are either accredited or candidates for accreditation. California, does not appear on that list. *See* www.wascsenior.org/apps/institutions (accessed June 18, 2013). Thus, has not been accredited by the applicable accrediting agency recognized by the DoEd and CHEA, and there is no evidence that has requested accreditation by that agency.

As is noted above, is recognized by the State of California's BPPE. The State of California acknowledges the qualitative difference between accredited and unaccredited educational institutions. The California Postsecondary Education Commission (CPEC), the state's planning and coordinating body for higher education from 1974 to 2011,[7] included the following language regarding the "benefits associated with accreditation" on its website:

> Both the federal government and the states use accreditation as an indication of the quality of education offered by American schools and colleges.
>
> At the federal level, colleges and universities must be accredited by an agency recognized by the United States Secretary of Education in order for it or its students to receive federal funds.
>
> At the state level, California allows colleges and universities that are accredited by the Western Association of Schools and Colleges (the recognized regional accrediting agency for California) to grant degrees without the review and approval of the Bureau for Private Postsecondary Education (BPPE). A list of approved institutions is available at the California Bureau for Private Postsecondary Education (BPPE).
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> In some states, it can be illegal to use a degree from an institution that is not accredited by a nationally recognized accrediting agency, unless approved by the state licensing agency. This helps prevent the possibility of fraud . . . .

www.cpec.ca.gov/CollegeGuide/Accreditation.asp.

The CPEC website goes on to warn about state laws in Illinois, Indiana, Maine, Michigan, Nevada, New Jersey, North Dakota, Oregon, Texas, and Washington regarding degree/diploma mills. *See id.*

The qualitative difference between accredited and unaccredited educational institutions, acknowledged by the CPEC, is also recognized by the State of California in its Education Code. Cal. Ed. Code section 94813 defines "accredited" as follows:

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[7] The CPEC ceased operations on November 18, 2011, after its funding was eliminated. *See* http://www.cpec.ca.gov.

> "Accredited" means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education.

With respect to unaccredited institutions that are approved to operate in California, Cal. Ed. Code section 94817.5 provides the following basic definition:

> "Approved to operate" or "approved" means that an institution has received authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs.

Cal. Ed. Code section 94887 sets the following guideline for the BPPE's grant of an approval to operate:

> An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau [BPPE], and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards . . . .

As the foregoing authorities indicate, accreditation of a college or university by a regional accrediting body recognized by the DoEd and CHEA indicate a "sound educational program" resulting in a degree that is accepted by institutions and employers throughout the United States. As stated on their respective websites, accreditation is intended "to assure academic quality and accountability" (CHEA) and to provide "a reasonable assurance of quality and acceptance by employers of . . . degrees" awarded by the accredited institutions (DoEd). By comparison, an approval to operate by California's BPPE is a lower level endorsement that an educational institution "has the capacity to satisfy the minimum operating standards" (Cal. Ed. Code section 94887) with no guarantee that degrees awarded by that school in California will be recognized and honored nationwide. That is the message that the BPPE delivered to in its approval letter of December 15, 2011, which stated that "your request complies with the minimum standards contained in the California Education Code and the California Code of Regulations."

The Immigration and Nationality Act is a federal statute with nationwide application. The regulations implementing the Act – including 8 C.F.R. § 204.5(k)(2) defining "advanced degree" for the purposes of section 203(b)(2) of the Act, as well as 8 C.F.R. § 204.5(l)(2) defining "professional" for the purposes of section 203(b)(3) of the Act – also have nationwide application. As defined in 8 C.F.R. § 204.5(k)(2), an "advanced degree" includes "any **United States academic or professional degree** . . . above that of baccalaureate" (or a foreign equivalent degree), "[a] **United States baccalaureate degree**" (or a foreign equivalent degree) and five years of specialized experience (considered equivalent to a master's degree), and "a **United States doctorate**" (or a foreign equivalent degree). (Emphases added.) Similarly, "professional" is defined in 8 C.F.R. § 204.5(l)(2) as "a qualified alien who holds at least a **United States baccalaureate degree**" (or a

foreign equivalent degree). (Emphasis added.) The repeated usage of the modifier "United States" to describe the degrees makes clear the intention of the rulemakers that the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis. The only way to assure nationwide recognition for its degrees is for the educational institution to secure accreditation by a regional accrediting agency approved by the DoEd and CHEA.

For an educational institution in California, the regional accrediting agency is WASC's Accrediting Commission for Senior Colleges and Universities. As previously discussed, the school that issued the beneficiary's degree, is not on the WASC list of accredited institutions. Nor is listed as a candidate for accreditation.[8] Accordingly, the beneficiary's "Master of Business Administration" from cannot be deemed to have nationwide recognition. Therefore, it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

As for s approval by ICE to enroll foreign students in the SEVP, the AAO notes that the ICE fact sheet submitted by the petitioner – How to Prepare for A Site Visit, Updated March 6, 2007 – indicates that no more than state licensure is required, and sometimes not even that, to participate in the program. Thus, SEVP approval by ICE, like approval to operate in California by the BPPE, is a lower-level endorsement that falls well short of accreditation by a DoEd and CHEA recognized accrediting agency. Furthermore, the approval of an institution for attendance by foreign students in F-1 nonimmigrant visa status[9] is unrelated to the requirements for classification as an advanced degree professional. A broad range of educational institutions are eligible for attendance by foreign students, including community colleges, junior colleges, seminaries, conservatories, high schools, elementary schools, and institutions which provide language training, instruction in the liberal arts or fine arts, and/or instruction in the professions. *Id.*

For the reasons listed above, although the regulations at 8 C.F.R. § 204.5(k)(2) do not contain an explicit accreditation requirement, the beneficiary's MBA from an unaccredited institution of higher education is not considered a "United States academic or professional degree above that of baccalaureate" under 8 C.F.R. § 204.5(k)(2). The AAO rejects the petitioner's claim that the word "any" in the phrase "any United States academic or professional degree" at 8 C.F.R. § 204.5(k)(2) includes degrees issued by an unaccredited institution of higher education.

Beyond the decision of the director, petitioner has also failed to establish that the beneficiary satisfies the minimum educational requirements of the offered position as set forth on the labor certification submitted with the petition. As is noted above, the beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). When determining

[8] It is also noted that California does not have a state agency that is considered by the DoEd to be one of the recognized authorities "as to the quality of public postsecondary vocational education in their respective states." *See* http://www2.ed.gov/admins/finaid/accred/accreditation_pg18.html.

[9] *See* 8 C.F.R. § 214.3.

whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying the plain language of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification – "Job Opportunity Information" – describes the terms and conditions of the job offered. In this case, Part H of the labor certification states that the minimum educational requirement to qualify for the proffered position is an MBA. Line 9 states that a "foreign educational equivalent" is acceptable. Lines 5 and 6 state that no training or experience in the job offered is required. Line 8 states that no alternate combination of education and experience is acceptable.

The beneficiary does not meet the above requirements. As previously discussed, the beneficiary's degree does not qualify as a U.S. MBA because it was not awarded by an educational institution that has been accredited by a regional accrediting agency recognized by the DOE and CHEA. Since he does not fulfill the educational requirements in Part H of the labor certification, the beneficiary does not qualify for the job offered. Therefore, it is also concluded that the beneficiary's MBA from an unaccredited university does not meet the educational requirements of the labor certification. For this reason as well, the petition cannot be approved.

Conclusion

The beneficiary does not possess an "advanced degree" within the meaning of 8 C.F.R. § 204.5(k)(2), and thus is not eligible for preference visa classification under section 203(b)(2) of the Act. Nor does the beneficiary meet the educational requirements on the labor certification to qualify for the job offered.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.